Supreme Court, U.S.
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No._____

In The

Supreme Court for the United States

October Term, 1995

BRUCE BUCHBINDER

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

BRUCE BUCHBINDER
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Petitioner In Pro Se

QUESTIONS PRESENTED

1. Whether the arbitrary dismissal of a litigant's cause of action before the Courts, especially an action being brought by a Pro Se Litigant, is the harshest sanction that can be imposed by the Courts, and whether such a sanction can rise to the level of a denial of proper Due Process, and Right to meaningful access to the Courts?

2. Whether a Court imposed monetary sanction for an allegation of misconduct that never actually took place, coupled with a subsequent sanction of dismissal, would rise to the level of judicial usurpation, giving proprietorial necessity for this Court to invoke its appellate jurisdiction of review in order to curb further usurpations of this nature?

3. Whether an individual Pro Se Litigant has a Ninth Amendment right to refuse to pay a Court imposed sanction for an allegation of misconduct that never actually took place, barring being denied access to the Courts?

4. Whether the Due Process Clause of the Fifth Amendment requires that a court order be subject to constitutional review in a civil proceeding when the order has but a "frivolous pretense to validity" because it was issued arbitrarily and capriciously for non-payment of sanctions for an allegation of misconduct that never actually took place?

5. Whether the Doctrine of Collateral Estoppel applies to the instant case, in that the instant case involves issues similar to issues raised in previous Supreme Court cases litigated by petitioner, wherein respondent ultimately waivered and defaulted thereby?

6. What is the standard that must be met by the United States Tax Court in order to fulfill a petitioners' right to the scope of review mandated by Congress pursuant to Title 5 United States Code Section 706, which requires, among other things, that the Tax Court hold unlawful and set aside agency action, findings, and conclusions found to be: arbitrary, and otherwise not in accordance with law; contrary to constitutional rights, powers, privileges, or immunities; in excess of statutory authority; not in observance of legal procedure; unsupported by substantial evidence; unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court (here the Tax Court); and in making these determinations, the Tax Court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error, and whether the petitioner herein has been substantially deprived of these remedies under the pretense that he had failed to state a claim?

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PRELIMINARY STATEMENT

In this case Petitioner Buchbinder has been severely punished for an allegation of misconduct before the Ninth Circuit Court of Appeals, which allegation of misconduct never actually took place, and the punishment is so extreme that Buchbinder has been substantially denied access to meaningful

judicial review of his case.

In the past few years the American Public has begun to question the validity of the taxing powers being imposed upon them. These questions have brought a hysterical response from the IRS agency who administers these tax provisions.

Through the Croasman Memorandum and IRS seminars conducted for the benefit of Federal Court Judges, these Judges have become accustomed to turning their face against any politically unpopular argument involving taxation. It has now become judicially expedient to merely deem any unpopular tax argument a frivolous and groundless argument, and dispense with the case without any semblance of judicial review, and it is this expedience Petitioner Buchbinder has found himself the victim of.

Additionally, this case involves an issue of judicial error in that the lower court (Tax Court) dismissed the instant case on the grounds that petitioner had failed to state a claim, when in fact the petitioner at the call of the calendar, openly stated his claim. And finally, this case involves the issue of Collateral Estoppel,' as Respondent in previous Supreme Court cases litigated by petitioner, involving similar issues as the instant case, knowingly and without coercion waived his right to file in the face of Petitioner's asserted facts and conclusions; Respondent thereby defaulting by waiver, pursuant to Supreme Court Rules 15.1 and 15.5; Respondent further failing to object in a timely fashion to Petitioner's claims of default by Waiver (Respondent Nolo Contendere/Non Prosequitur/Estoppel In Pais/Estoppel by Laches).

The Petitioner, in appearing pro se, relies on *Haines v. Kerner* (1972), 404 U.S. 519, *Price v. Johnson* (1948), 344 U.S. 266, plus many others, in that "pro se," "pro per" litigants are not held to the same standards as attorneys, appearing on

'appeal' in this Court.

OPINIONS BELOW

The Order of the Court of Appeals for the Ninth Circuit has not been reported. It is copied and attached to the appendix hereto, APP. A, *infra.* The Order of Dismissal and Decision of the United States Tax Court has been reported. It is copied and attached to the appendix hereto, APP. B, *infra.*

JURISDICTION

The Commissioner's Notice of Deficiency issued to Buchbinder on February 23, 1994, and Buchbinder filed a timely petition to the U.S. Tax Court. The Tax Court on its own motion arbitrarily and capriciously dismissed the instant case for failure to state a claim, merely stating, that Buchbinder was raising "FRIVOLOUS AND GROUNDLESS ARGUMENTS", in spite of the fact that at the call of the calendar petitioner openly stated a claim, and throughout his pleadings had based his arguments on irrefutable points and authorities. The final Order of Dismissal and Decision of the Tax Court entered on April 11, 1995. Buchbinder filed a timely Notice of Appeal to the Ninth Circuit Court of Appeals. The Commissioner by Motion argued for dismissal of Buchbinder's Appeal for failure of Buchbinder to pay sanctions from a previous appeal numbered CA 92-70114. The order of the Court dismissing the appeal was entered on August 21, 1995, with no further filings permitted.

Jurisdiction of this Court to review the judgment of the Ninth Circuit is invoked under 28 U.S.C. § 1254(1).

Authority to proceed in this Court is by authority of the people of the united States by their Constitution, Article III Section 2, Clauses 1 and 2, in which this Court has appellate jurisdiction.

STATUTORY PROVISIONS INVOLVED

Title 5 United States Codes (Government Organization and Employees)

§ 554 *Adjudications*

§ 556 *Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision.*

§ 702 *Right of review*

§ 703 *Proper Venue for Court of Review*

§ 706 *Scope of review*

SPECIFICALLY

§ 554(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved -

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court; [in pertinent part]

§ 702 Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof . . . [in pertinent part]

§ 703 Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction . . . [in pertinent part]

§ 706 Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall -

(2) hold unlawful and set aside agency action, findings, and conclusions found to be -

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
(B) contrary to constitutional right, power, privilege, or immunity;
(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
(D) without observance of procedure required by law;
(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or

otherwise reviewed on the record of an agency hearing provided by statute; or
(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the *whole record* or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. [in pertinent part, Emphasis added] (Sept. 6, 1966, P.L. 89-554, § 1, 80 Stat. 393).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendments to the United States Constitution

Amendment I of the United States Constitution provides in pertinent part:

Congress shall make no law respecting . . . the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V of the United States Constitution provides in pertinent part:

No person shall.... be deprived of life, liberty, or property, without due process of law;

Amendment IX of the United States Constitution provides in pertinent part:

The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained

by the people.

STATEMENT OF THE CASE

The Ninth Circuit Court of Appeals had jurisdiction pursuant to Title 26 U.S.C. § 7483. The Tax Court had jurisdiction pursuant to Title 26 U.S.C. § 6213, although Petitioner has vigorously contested the jurisdiction of the Tax Court throughout the course of these proceedings.

Petitioner Buchbinder was previously issued Notices of Deficiency from the Commissioner of Internal Revenue, the issue involved investments that Buchbinder had made during the years in question, and additionally a pension disbursement. In the first deficiency action the basis for the Notice of Deficiency related to the treatment of a forward contract and certain research and development expenditures which Buchbinder claimed on his 1981 federal income tax returns and which were disallowed by the IRS. Nothing about that case involved "**WAGES**". In the second deficiency action, leading to this appeal, the basis for the Notice of Deficiency related to a pension disbursement and an IRC Section 6651(a) penalty for the year 1991.

In the first deficiency action Buchbinder challenged the validity of the Notice arguing that this was an unapportioned direct tax being imposed upon his personal property. Buchbinder argued that the rule of apportionment for direct taxes applied to personal property as well as real property *Pollock v. Farmers' Loan Trust Co.,* 157 U.S. 429, 15 S.Ct. 673, aff. reh., 158 U.S. 601, 15 S.Ct. 912 (1895), and that the dividends received from invested capital was as much personal property as the invested capital *Pollock,* supra.

Buchbinder further argued that after the ratification of the Sixteenth Amendment it was held that nothing in the Amendment repudiated the holding in *Pollock*, that a tax on real or personal property was direct and must be applied by the rule of apportionment *Brushaber v. Union Pacific Railroad Company,* 240 U.S. 1, 36 S.Ct. 236 (1915). That the term income in the Sixteenth Amendment cannot be interpreted so as to modify or repeal the original Articles of the Constitution, Congress cannot conclude what is and what is not income, and it has now become the duty of the Courts to determine on a case by case basis whether the income tax is operating as a "DIRECT TYPE TAX" or whether it is operating as an "INDIRECT TYPE TAX," giving no regard to form, but giving due regard to truth and substance *Eisner v. Macomber,* 252 U.S. 189, 206, 40 S.Ct. 189 (1920).

The Tax Court in the first case arbitrarily deemed Buchbinder's arguments *tax-protester gibberish,* without any finding that the Notice of Deficiency was valid, without jurisdictional review, without review of agency authority, or review of the constitutional issues, and upheld the Commissioner's deficiency allegation.

Buchbinder timely appealed to the Ninth Circuit Court of Appeals for a de novo review, making the same argument as above. The Commissioner in its brief argued that Buchbinder was making tax-protester arguments that *"WAGES ARE NOT INCOME,"* however the Commissioner's attorney knew, or should have known, full well that wages were not even an issue in that case, nor was that proposition ever brought before the court.

For whatever unknown reason the Ninth Circuit adopted the Commissioner's argument, upheld the Tax Court decision, and sanctioned Buchbinder for making a frivolous argument, which Buchbinder never actually made. Buchbinder refused to pay the

sanctions and instead petitioned this Court for a Writ of Certiorari, and ultimately for a Rehearing.

The second Notice of Deficiency, which has led to this appeal, the Commissioner issued the deficiency notice for additions to tax under IRC Sections 61, 72, 408(d) and IRC Section 6651(a), but it involved the same tax issues as the first Notice of Deficiency. Buchbinder again timely petitioned the U.S. Tax Court raising the issues referenced herein earlier, and further contended that if the income tax is operating as an "INDIRECT TYPE TAX," as the Commissioner contends, then the Commissioner has never identified which activity is the Revenue Law taxable activity Buchbinder was involved in, nor has he ever identified which tax was due of the some 85+ internal revenue taxes authorized in the Internal Revenue Code, nor has he ever identified which revenue law of the 15 or so different revenue laws is applicable, upon which a "proper" and "valid" deficiency might have been based on to begin with. What he has identified relates to some function of the Bureau of Alcohol, Firearms and Tobacco. Buchbinder contending he had NEVER been involved in any BATF activities, or in any activity relating to Titles 5, 7, 11, 19, 20, 25, 28, 31, 38, 42, 46, 48, 32 and 34, and their related taxable activities. Therefore, Buchbinder contending the Commissioner had no jurisdiction to begin with in this case, and was completely and totally outside his jurisdiction and area of authority. Therefore, because of this procedural error, Buchbinder contending personam jurisdiction had been invoked by false pretense.

Concerning the exact nature of the Federal Income tax, Buchbinder showed that where Congress has expressly spoken on the subject, the question of interpretation is closed *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, Inc. Et. Al., (1984) 467 U.S. 837, 842; 104 S. Ct. 2778, 81 L. Ed. 2d 694. Buchbinder showing that Congress had spoken on this matter as follows: Congressional Record, Proceedings and Debates of

the 78th Congress First Session, Volume 89 Part 2, March 2, 1943, to April 5, 1943 (pages 1459 to 2940) at page 2580, where it is clearly stated:

"The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to *certain activities and privileges* which is measured by reference to the income which they produce. The income is not the subject of the tax; it is the basis for determining the amount of the tax." [in pertinent part, Emphasis added].

Buchbinder showed it quite clear from the express wording found in the Congressional Record, that Congress rejects the theory that there is a tax levied upon income. Buchbinder showed instead, that the tax is levied upon ***certain activities***, that would fall within the powers of taxation granted to Congress by the Constitution, and is merely measured by the income generated from the taxable activity.

Buchbinder clearly showing as a matter of law and fact that he was not engaged in any activity upon which Congress had imposed a tax.

In addition to the above issues, Buchbinder further brought to the Tax Court's attention, the Waiver filed by Respondent in Supreme Court Docket No. 93-798, the original case brought before Tax Court Judge Powell, and also Supreme Court Docket No. 94-620. As these two cases involved similar issues as the instant case, this raises the question of whether Collateral Estoppel applies and is operative in the instant case.

However, in spite of all this, the Tax Court would not proceed to trial, instead capriciously and arbitrarily dismissing the case on the pretense that Petitioner had failed to state a claim. This frivolous decision was arrived at in spite of the fact that petitioner openly declared, at the call of the calendar, that

he was challenging the validity of the Notice of Deficiency on grounds that respondent had invoked personam jurisdiction under false pretenses. As matter of fact in the official transcript, on page 2, lines 11 through 16, the record clearly shows that petitioner openly stated his claim. (APP. E)

Furthermore, on the basis of this pretense, none of the legal and factual issues raised by Buchbinder were given any substantial legal analysis by the Tax Court, nor was a well-reasoned opinion and conclusion relative to these issues entered. The Tax Court Judge, based on this pretense, simply ignored the Law of Taxation, the Constitution of the United States, the express will of Congress, the jurisdictional issues going to the legality of the proceedings, the Waiver issue and the default, and the Estoppels created thereby, and entered judgement against Buchbinder. Again, Buchbinder appealed to the Ninth Circuit Court of Appeals for a de novo review, and again the Commissioner by motion sought to have Buchbinder's appeal dismissed on the contention that Buchbinder had failed to pay the sanctions imposed by the Ninth Circuit in Buchbinder's first appeal.

REASONS FOR GRANTING WRIT

Petitioner has been before Tax Court Special Trial Judge Carleton D. Powell once before. In Tax Court Case Docket No 41563-85 Petitioner submitted to the Tax Court 161 pages (approximately 40,250 words) of pleadings, raising issues all supported by irrefutable points and authorities and the majority of those authorities being Supreme Court cases. That particular case was likely the most thoroughly documented case ever briefed concerning the subject of Federal Taxation, historically going back to very early cases such as the Hylton case (1796). However, it is highly improbable that that case was ever

thoroughly read or understood by the Judges of the Tax Court, if they ever read it at all. None of the legal and factual issues raised by the Petitioner in that case, were given any substantial legal analysis by the Tax Court, nor was a well-reasoned conclusion relative to that case and the issues therein, entered by the Tax Court. The presiding judge in that case was Special Trial Judge Carleton D. Powell, and it is no wonder that Judge Powell did not look favorably upon petitioner in the instant case when petitioner appeared before him again, and on his own motion, on the pretense that petitioner had not stated a claim, Judge Powell rendered his infamous judgement and issued his Order of Dismissal and Decision (APP. B).

Additionally, in the Order of Dismissal and Decision, Judge Powell characterized petitioner's arguments as frivolous and groundless. Judges in the Tax Court have persistently labeled the arguments of this petitioner to be frivolous and groundless, that being the only ground that they can reasonably stand on. The allegation of frivolous is nothing more than a bare naked allegation and the federal courts should be ashamed to have to fall back on such a weak argument. The Federal Courts have consistently held that the Internal Revenue Service is not entitled to be merely presumed correct, based upon its **"BARE NAKED"** allegations, so how is it then that the federal courts presume themselves correct based on the **"BARE NAKED"** allegation of labeling unpopular issues frivolous and groundless? *See Portillo v. C.I.R.*, 932 F.2d. 1128 (5th Cir., 1991); *Carson v. United States*, 560 F.2d 693 (5th Cir., 1977); *Anastasato v. C.I.R*, 794 F.2d 884, 886 (3rd Cir., 1986); *Weimerskirch v. C.I.R.*, 596 F.2d 358, 360 (9th Cir., 1979).

Respondent's position in this whole matter has also been that the issues raised by the petitioner were frivolous. Relating to that statement is this question: ARE DECISIONS OF THE UNITED STATES COURTS ADDRESSING SUCH QUESTIONS OR ISSUES FRIVOLOUS? It is clear that such

decisions may not be final, but certainly not frivolous. Petitioner did not and would not set forth any argument not supported by decisions of the United States Courts, including the Tax Court. IS WHAT IS STATED PLAINLY IN THE CODES AND REGULATIONS FRIVOLOUS? If so, the Respondent had no basis whatsoever to even begin to approach or attack the Petitioner, as he did. The Petitioner did not and would not claim anything that is not supported in the Codes, Statutes and regulations relating to the subject matter. If the Codes, Statutes and regulations are frivolous, then there is no standard that anyone, including the Tax Court, can act or be expected to act on, let alone be held accountable to.

In the instant case, the Tax Court grievously erred in ruling the petitioner failed to state a claim. Petitioner openly stated his claim at the call of the calendar, on record before Judge Powell. This is a matter of court record (APP. E). Petitioner throughout his pleadings, and appearing before Judge Powell at the call of the calendar, openly stated on record that he was contesting the validity of the Notice of Deficiency. Furthermore, petitioner came before the Tax Court by Special Appearance and brought this to the Court's attention. This Special Appearance was pursuant to his Notice of Withdrawal to the Court based on the fact that the Court had no jurisdiction over petitioner in that it lacked personam jurisdiction, and whatever jurisdiction it perceived it had was invoked by false pretense by the commissioner. Petitioner's position in respect to this claim was fully briefed in petitioner's Notice of Withdrawal to the Court. The Commissioner of the Internal Revenue Service in his pleadings neither objected by brief or motion nor at the calendar call to the claims and allegations of the petitioner in this respect, nor did IRS Appeals Officer Bonnie Ikeda subsequent to a letter written to her September 9, 1994 regarding issues relative to this matter (APP. C, D). Therefore, petitioner's claims and allegations relative to this matter are deemed admitted pursuant Federal Rules of Civil Procedure, Rule 8 (d).

Furthermore, Judge Powell's perception of petitioner's arguments do not correspond to the arguments made by petitioner in the instant case nor in the prior case that Judge Powell presided over, wherein petitioner submitted more than 161 pages, and approximately 40,250 words, this alone indicating that Judge Powell either read the argument and didn't understand it, or didn't bother to read petitioner's pleadings at all. What leads petitioner to this conclusion is the fact that in the instant case Judge Powell makes reference to the prior case Buchbinder V. Commissioner, T.C. Memo. 1990-627, 60 TMC 1421 (Docket No. 41563-85), and states in the Order of Dismissal and Decision that "... petitioner argued that he was not subject to the federal income tax laws." The petitioner would like to bring to this Court's attention that petitioner has never argued that he is not subject to the federal tax laws. Petitioner has never challenged the Tax Court's subject matter jurisdiction under the federal revenue laws, instead petitioner challenged the Internal Revenue Service's jurisdiction over him In Personam, under the federal laws. Petitioner's arguments were jurisdictional in nature, jurisdiction being the threshold issue in all of petitioners pleadings, including the instant case.

As to the misconception that petitioner allegedly argued he was not subject to the federal tax laws, it was Respondent who first injected this error into the original proceedings and induced the court to this error. So it is not surprising that Judge Powell would bring this erroneous concept up again in his Order of Dismissal and Decision, in an attempt to perpetuate it.

Judge Powell further goes on to state in his Order of Dismissal and Decision that in petitioner's view, the Solicitor General not filing an opposition to the petition, constitutes an acknowledgement that petitioner's arguments were correct under Rule 15, Rules of the Supreme Court, and then goes on to further state regarding this view that there is nothing in Rule 15 that requires a party to file an opposition to a petition. Here

again Judge Powell misses the point. It is not that Rule 15 requires that a party file a opposition to a petition, but that Rule 15 obligates a party to correct any misstatements of fact or law in such petition before the Supreme Court.

Now, concerning Respondent's waiver in face of petitioner's asserted facts and conclusions in earlier previous Supreme Court cases (Docket Nos. 93-798, 94-620); the waiver issue requires careful consideration by the Court as this issue bears on the integrity and credibility of the American judicial system. It cannot be contemplated by Congress to leave its citizens without the ability to make an adequate record or to have an adequate and meaningful review of that record. Nor could Congress not have intended that those individuals have a meaningful forum for their grievances, in pursuit of redress of grievance, when the government or its agents pursue those citizens with allegations of liabilities - all unsubstantiated and unproven. Nor could Congress contemplate leaving American citizens with no adequate remedy at law for their properly brought and specifically pled issues. If such were the case this would amount to judicial usurpation of power by the lower courts, and the rights secured under the Constitution guaranteeing proper due process and redress of grievance would be abrogated.

Concerning these earlier previous cases, they were both subsequently appealed on the grounds that petitioner had not been afforded the Scope of Review mandated by Title 5, Sections 701-706, and on infractions of Due Process. On appeal to the Supreme Court, Respondent in these cases defaulted by Waiver, pre-empting further review (Estoppel in Pais/Estoppel by Laches), and prompting denial of certiorari. As such, these cases (Docket Nos. 93-798, 94-620) were not fully adjudicated and the issues and questions raised by petitioner relative to Scope of Review and Due Process remained unanswered and open, petitioner left without remedy at law for

his properly brought and specifically pled issues, craving for redress of grievance. In these cases, the Government, pursuant to Supreme Court Rule 15.1, was obligated as Respondent to address any perceived misstatements of fact or law before the Court. However, the Government expressly waived its right to respond pursuant to Supreme Court Rule 15.5. Such a waiver in the face of petitioner's asserted facts and conclusions in these cases, served to leave the petitioner's allegations uncontested before the Court and left the Respondent unable to later act in contravention of those allegations. In these cases, the Government offered no defense against the accusations made by petitioner, and did not point out any perceived misstatements of fact or law *having an obligation* to do so pursuant to Supreme Court Rule 15.1. The Government specifically chose to waive that right pursuant to 15.5. Such a response is a plea of no contest entered willingly and without coercion. In these cases, Respondent defaulted by tender of express waiver of its obligation to counter petitioner's version of the facts and law, thereby accepting petitioner's version of the facts and law to be true. In these cases, Respondent did not correct the record as to what issues were proper to bring before the Court, and specifically did not question the basis for the petition, nor question the grounds upon which petitioner raised his questions, nor did Respondent bring to the Court's attention that petitioner raised no valid Due Process issue, nor did Respondent bring to the Court's attention that Petitioner was making assertions which had no valid basis in the record. In short, Respondent made no attempt to protect the basis he had established in the lower courts. He made no attempt to show the Court that the issues being raised were based in frivolous and groundless argument, as he had contended in the lower courts in these cases. Instead, Respondent conceded by waiver that petitioner had indeed not received the scope of review mandated by Title 5, Section 706; Respondent thereby conceding that petitioner did not receive due process of law in these cases. Instead of correcting the record in these cases, the Respondent waived his

right to file a Brief in Opposition, rendering rebuttal moot, and defaulting thereby. Petitioner's statements and assertions, unrebutted in the face of Rule 15.1, standing as truth, therefore rendering Respondent's rebuttal before the Court moot, even had certiorari been granted in these cases.

Subsequently in a Supplemental Brief to the Supreme Court in these cases, petitioner claimed a default-judgment against respondent pursuant respondent's default by waiver and further invoked an Estoppel in Pais on all further action in connection with these cases; making such claim under the Common Law Rule of Reasonable Argument. *U.S. v. Schneiderman*, 102 Fed. Supp. 87 (1951) and *States S.S. Company v. Permanente S.S. Corp.*, 231 F.2d. 82 (1956). A copy of the Supplemental Brief in these cases was timely served on counsel for Respondent and counsel for Respondent failing to object in a timely fashion, conceded the validity of said claim (said claim inherent in the nature of the waiver, as in any other court such action considered a Plea of No Contest--Nolo Contendere or Non Prosequitur). Thus, since petitioner has established a default-judgment by Waiver in these earlier previous cases, therefore it would seem reasonable to assume that the condition of Collateral Estoppel applies and is operative in the instant case.

However, the waiver issue is only one of several issues that plague the instant case. Another important issue that bears upon the supervisory role of this High Court is the issue of review in the lower court as relates to specific actions of the Tax Court in the instant case.

This Court should grant certiorari in order to resolve important issues that the lower courts refuse to address, concerning issues of jurisdictional, constitutional, and factual matters, such as the abuses manifesting themselves in the instant case, because litigants are not receiving a full and meaningful review pursuant to Title 5 U.S.C. § 554, 702, 703

and 706 and thereby are precluded from procedural and substantive due process.

The Petitioner, in the instant case, had brought to the attention of the Tax Court specifically worded issues for its review. These issues went directly to the jurisdiction of the taxing agency on the matters involved, and therefore to the jurisdiction of the Tax Court. The Tax Court, however, on the pretense that petitioner had failed to state a claim, denied any review or hearing on any of those issues, and deprived petitioner of any semblance of review as mandated by Title 5 U.S.C. Section 706.

This attitude toward the Petitioner shown by the Tax Court is arbitrary and prejudicial. This attitude also goes against the Tax Court's duty as delegated to it through the Administrative Procedures Act (APA), specifically at Section 706 which mandates that Court's standards of review.

In the APA at section 706, there are given the delegated guidelines for the standard of review of the Tax Court. The first paragraph of that statute states the reviewing court shall decide "all relevant questions of law, *interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.*" (emphasis added). The mandated guidelines follow.

If the Tax Court is refusing to take jurisdiction over interpreting constitutional and statutory provisions (jurisdiction being the prime threshold issue), on pretenses such as the one Judge Powell used in the instant case, it cannot then determine the meaning or applicability of the terms of an agency action in any meaningful way in keeping with its mandated guideline.

The Administrative Procedure Act, Title 5 of the United States Code is the only source of protection that the American

citizen has against arbitrary governmental agency actions, and if the scope of review mandated by Title 5, Section 706 is sidestepped by the lower courts and viewed as meaningless, the American citizens are then stripped bare of any protection and are reduced to victims rather than American citizens.

A further important issue that bears upon the supervisory role of this High Court is the issue of the arbitrary dismissal of petitioner's cause of action before the Ninth Circuit Court of Appeals, and whether such action constitutes a denial of proper Due Process, and Right to meaningful access to the Courts.

The right of the individual citizens, which make up the public of the North American Continent, to effective and meaningful access to their courts, is a question of paramount and significant importance. The only means the average individual of the American Public has to check government excesses, and abuse of the awesome powers of its agencies, is to bring the cause before the Courts.

It is the customary practice in this American Society to settle the people's disputes with government agencies in the Courts, this case however is a classic example of how the doors to the very Courts who are sworn to protect the people are slowly being closed to the people.

An individual's constitutional right of access to the Courts has been upheld times innumerable. Perhaps the most comprehensive analysis of this issue can be found in the Annotation of *WHAT, IN VIEW OF SUPREME COURT, CONSTITUTES THE CONSTITUTIONAL RIGHT OF ACCESS TO THE COURTS,* 52 L. Ed. 2d 779. In *Gilmore v. Lynch,* 319 F. Supp. 105 (DC Cal. 1970) Affd. 404 U.S. 15, 30 L. Ed. 2d 142, 92 S. Ct. 250, the District Court, in a decision affirmed without opinion by the Supreme Court, has defined access to the Courts as encompassing "all means a *defendant* or

petitioner might require to get a fair hearing from the judiciary on all charges brought against him or grievances alleged by him". Although most of the cases on this issue have involved state review procedures, the Supreme Court has indicated that the same principles are applicable to federal avenues of review. *See United States v. MacCollom,* 426 U.S. 317, 49 L. Ed. 2d 666, 96 S. Ct. 2086 (1976). Moreover, these cases involved prisoners, and for the most part were habeas corpus actions. Therefore, the common everyday Citizen's constitutional right of meaningful access to the Courts would seem to be a novel question and question of first impression.

CONCLUSION

Therefore, for all of the above reasons, the Court should consider granting certiorari in this case.

However, if Respondent's tender of express waiver in earlier previous Supreme Court cases litigated by petitioner covering similar issues, constitutes a default on the part of Respondent, then there may be no reason to grant certiorari, as the issues have already been decided by default, in that the condition of Collateral Estoppel touches the instant case, unless the Court wishes to invoke its appellate jurisdiction of review in order to curb abuses to litigants in the lower courts, such as those abuses manefesting themselves in this case.

Respectfully submitted,

BRUCE BUCHBINDER
1178 Via Ferrari Drive
San Jose, California 95122
(408) 279-4054
Petitioner in Pro Se

DATED: November 15, 1995

APPENDIX A-- ORDER OF NINTH CIRCUIT COURT OF APPEALS.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRUCE BUCHBINDER, Petitioner-Appellant, vs. COMMISSIONER INTERNAL REVENUE SERVICE, Respondent-Appellee.	No. 95-70553 IRS# 8262-94 ORDER (Filed Aug. 21, 1995)

Before: ALARCON, FERNANDEZ, and RYMER, Circuit Judges

Appellee's motion to dismiss this appeal for failure to pay sanctions imposed in a previous appeal is granted. See Hymes v. United States, 993 F.2d 701 (9th Cir. 1993).

No motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained in this closed docket.

mocal/8.16.95/mg/5

APPENDIX B-- ORDER OF DISMISSAL AND DECISION OF UNITED STATES TAX COURT

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

BRUCE BUCHBINDER, Petitioner,	)	
v.	)	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	DOCKET NO. 8262-94

ORDER OF DISMISSAL AND DECISION

By notice dated December 14, 1994, this case was calendared for trial at the Court's Trial Session in San Francisco, California, commencing at 10:00 a.m., March 6, 1995. On January 24, 1995, petitioner lodged a "Notice of Withdrawal" that the Court filed as a Motion to Dismiss for Lack of Jurisdiction. That motion was denied by the Court. Petitioner appeared at the call of the calendar. Petitioner does not dispute the deficiency determined in the notice of deficiency. Rather, the gravamens of petitioner's motion and argument before the Court is that the Court did not have jurisdiction over petitioner because he is a "non-taxpayer", and, therefore, the notice of deficiency is invalid. This is the primary and recurrent theme that runs throughout petitioner's pleadings,

and is frivolous.

This is not the first time that petitioner has been before this Court, nor is it the first time that he has raised this argument. In Buchbinder v. Commissioner, T.C. Memo. 1990-627, 60 TCM 1421, affd in part and vacated in part 999 F.2d 542 (9th Cir. 1993), cert. denied 114 S.Ct. 692 (Jan. 10, 1994), petitioner argued that he was not subject to the Federal income tax laws. We rejected that argument. While this Court did not impose sanctions we specifically warned petitioner that damages could be imposed under section 6673. The Court of Appeals, however, imposed sanctions in the amount of $2,500 for prosecuting a frivolous appeal. In Buchbinder v. Commissioner, T.C. Memo. 1994-7, 67 TCM 1934, dismissed per order (9th Cir., July 25, 1994), petitioner again persisted with the argument that he was not subject to the Federal income tax laws. We imposed damages in the amount of $250 under section 6673. Finally, in Buchbinder v. Commissioner, docket No. 3187-93, Order and Decision entered Feb. 14, 1995, on appeal (9th Cir., Mar. 14, 1995), petitioner again raised variants of the same argument, and the Court again rejected the arguments as frivolous and imposed damages under section 6673 in the amount of $1,000.

Notwithstanding the prior rejection of these arguments and the imposition of sanctions by this Court and the Court of Appeals, petitioner has again insisted on making the same arguments. This is predicated on his view that when he filed a petition for a writ of certiorari in the first case, the Solicitor General apparently did not file an opposition to the petition. According to petitioner, this constituted an acknowledgement that his arguments were correct under Rule 15, Rules of the Supreme Court of the United States. There is nothing in Rule 15 that requires that a party file an opposition to a petition. Indeed,

Rule 15.5 specifically recognizes that a party may waive his right to file an opposition, and the Solicitor General frequently waives his right to file an opposition when a case clearly does not merit review by the Supreme Court. We pointed out at the hearing that petitioner's argument was groundless and warned him that if he persisted with the argument that he was not subject to the Federal income tax laws, we would dismiss the case and impose damages. He has ignored our warnings. Accordingly, it is

ORDERED that, on the Court's own motion, this case is dismissed for failure to state a claim upon which relief may be granted. It is further

ORDERED AND DECIDED that there are a deficiency in Federal income tax and an addition to tax pursuant to section 6651(a) due from petitioner for the taxable year 1991 in the amounts of $544 and $136, respectively. It is further

ORDERED that respondent's oral motion for damages pursuant to section 6673 made on March 6, 1995, is granted. It is further

ORDERED AND DECIDED that petitioner shall pay to the United States a penalty in the amount of $1,000 pursuant to section 6673(a) on the ground that his position in this proceeding is frivolous.

Carleton D. Powell
Special Trial Judge

Entered: April 11, 1995

APPENDIX C-- LETTER FROM IRS APPEALS OFFICER BONNIE IKEDA SUBSEQUENT TO PETITIONER'S LETTER OF SEPTEMBER 9, 1994, (INCLUDING ATTACHMENT)

Internal Revenue Service

Western Region

Department of the Treasury

San Jose Appeals Office
55 S. Market, Suite 516
San Jose, CA 95113

Person To Contact:
Bonnie Ikeda

Bruce Buchbinder
1178 Via Ferrari Drive
San Jose, CA 95122

Contact Phone Number:
(408) 494-7805

Date: 12 September 1994

CERTIFIED MAIL 2774649182

Re: 1991 Tax Return
Docket No. 8262-94

Dear Mr. Buchbinder:

I have received your correspondence dated September 9, 1994.

I understand you are not available for the conference that was scheduled for September 14th, at 8:00am. I have reviewed the petition filed, and the information is in the administrative file.

Based on your arguments, please be advised this case is being

forwarded to District Counsel for trial preparation. The paralegal/attorney assigned to the case will be in contact with you to discuss this matter.

Please be advised I will recommend the Government seek damages per Code Section 6673, as outlined in the attachment.

If there are any questions, my phone number and address are listed above.

Yours truly,
/s/ Bonnie Ikeda
Bonnie Ikeda
Appeals Officer

(Attachment to Appendix C letter, in pertinent part)

[Sec. 6673]

SEC. 6673. SANCTIONS AND COSTS AWARDED BY COURTS.

[Sec. 6673(a)]

(a) TAX COURT PROCEEDINGS.—

(1) PROCEDURES INSTITUTED PRIMARILY FOR DELAY, ETC.— Whenever it appears to the Tax Court that—

(A) proceedings before it have been instituted or maintained by the taxpayer primarily for delay,

(B) the taxpayer's position in such proceeding is frivolous or groundless, or

(C) the taxpayer unreasonably failed to pursue available administrative remedies, the Tax Court, in its decision, may require the taxpayer to pay to the United States a penalty not in excess of $2S,000.

(2) COUNSEL'S LIABIILITY FOR EXCESSIVE COSTS— Whenever it appears to the Tax Court that any attorney or other person admitted to practice before the Tax Court has multiplied the proceedings in any case unreasonably and vexatiously, the Tax Court may require—

(A) that such attorney or other person pay personally the excess costs, expenses, and attorneys fees reasonably incurred because of such conduct, or

(B) if such attorney is appearing on behalf of the Commissioner of Internal Revenue, that the United States pay such excess costs, expenses, and attorneys fees in the same manner as such an award by a district court.

APPENDIX D-- PETITIONER'S LETTER TO IRS APPEALS OFFICER BONNIE IKEDA, (INCLUDING ATTACHMENT)

September 9, 1994

1178 Via Ferrari Drive
San Jose, Calif. 95122

Bonnie Ikeda
Appeals Officer
Internal Revenue Service
Appeals Office
55 S. Market Street, Suite 516
San Jose, CA 95113-2346

Dear Ms. Ikeda:

I am in receipt of your letter dated August 11, 1994 (See copy attached hereto). Thank you for your correspondence. I will not be able to keep the appointment you scheduled for September 14.

Regarding this matter, on May 19, 1994 I filed a Petition in the above case with the United States Tax Court. On July 13, 1994, your office filed an answer, and on August 8, I filed a Reply to Answer Pursuant to Rule 37.

I trust that you have copies of these filings. However, if you do not, please write to me and I will send you copies of them. I would like to state that these filings constitute the information I wish considered in this case. Furthermore, for the record, I would like to state the following:

1. That I am the petitioner in the above-mentioned Petition, appearing on my own

behalf In Propria Persona (Sui Juris).

2. That the jurisdictional defects raised by the aforementioned Petition raises serious Constitutional questions that are fully supported by reported decisions of the United States Supreme Court and other published public record documentation.

3. That my Petition is not to be construed as a challenge to the Court's subject matter jurisdiction under the federal revenue laws, instead my Petition challenges the Internal Revenue Service's jurisdiction over this petitioner In Personam under the federal revenue laws.

Respectfully,

/s/ Bruce Buchbinder
Bruce Buchbinder

(Attachment to Appendix D letter.)

Internal Revenue Service
Western Region

Department of the Treasury
San Jose Appeals Office
55 S. Market, Suite 516
San Jose, CA 95113

Person To Contact:
Bonnie Ikeda
Contact Phone Number:
(408) 494-7805

Bruce Buchbinder
1178 Via Ferrari Drive
San Jose, CA 95122

Date: 11 August 1994

CERTIFIED MAIL 2774649520

Re: 1991 Tax Return
Docket No. 8262-94

Dear Mr. Buchbinder:

I have been assigned to consider the above referenced case.

At this time, I have scheduled a conference for September 14th, 1994 at 8:00am. The office address is listed above.

Please bring with you all information you wished considered. Please be aware that constitutional arguments will not be discussed at this meeting.

If this appointment cannot be kept, please contact me so that other arrangements can be made.

If there are any questions, my phone number and address are listed above. Thank you in advance for your cooperation.

Yours truly,
/s/ Bonnie Ikeda
Bonnie Ikeda
Appeals Officer

APPENDIX E-- PAGES 1 AND 2 OF THE OFFICIAL TRANSCRIPT OF HEARING BEFORE THE UNITED STATES TAX COURT, HELD IN SAN FRANCISCO, CALIFORNIA ON MONDAY, MARCH 6, 1995, CONCERNING DOCKET NO. 8262-94. [IN PERTINENT PART]

UNITED STATES TAX COURT:

In the Matter of:

BRUCE BUCHBINDER,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE

Respondent.

Monday
March 6, 1995

Federal Bldg. & Courthouse
Room 2-1408
450 Golden Gate Avenue
San Francisco, California

The above-entitled matter came on for calendar call, pursuant to notice, at 10:17 a.m.

BEFORE: HONORABLE CARLETON D. POWELL
Special Trial Judge

APPEARANCES:

On behalf of Petitioner:

BRUCE BUCHBINDER, PRO SE

1178 Via Ferrari Drive
San Jose, CA 95122-2657

On behalf of Respondent:

STEVEN WALKER, ESQ.
Office of District Counsel
Internal Revenue Service
55 South Market, Suite 505
San Jose, CA 95113
(408) 494-7850

Video/Audio Recording Services, Inc.
2001 H Street
Sacramento, CA 95814
(916) 448-2457

(end of page 1)

PROCEEDINGS

THE CLERK: Calling from page 9 of the calendar, Docket Number 8262-94, Bruce Buchbinder. Please state your appearance for the record.

MR. WALKER: Steven Walker for respondent.

MR. BUCHBINDER: Bruce Buchbinder for petitioner.

THE COURT: Mr. Buchbinder. Mr. Walker, what is

the status of this case?

MR. WALKER: It's ready for trial.

THE COURT: What are the issues involved?

MR. BUCHBINDER: Your Honor, I'm making a special appearance today pursuant to my notice of withdrawal, and I'm claiming that I was drawn into this jurisdiction by fraud, and the respondent's failing to object, pursuant to Federal Rules of Civil Procedure, Rule 8(d), it's deemed admitted.

THE COURT: Well, the only problem, there's several problems with that, Mr. Buchbinder, and I know you've been before this Court at least three times. You've been in front of me once.

MR. BUCHBINDER: That's right.

THE COURT: But once you filed a petition in this Court, then the only way that it can be dismissed or with-drawn, so to speak, is that I'm going to issue a decision that is going to be Supporting the notice of deficiency.

(end of page 2)

Supreme Court, U.S.
FILED
DEC 5, 1995
CLERK

No. 95-778

In The

Supreme Court for the United States

October Term, 1995

BRUCE BUCHBINDER

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL BRIEF

BRUCE BUCHBINDER
1178 Via Ferrari Drive
San Jose, California 95122
(408) 279-4054
Petitioner In Pro Se

15 pp

QUESTIONS PRESENTED

1. Should the Court grant certiorari in a case where statements of fact and law go uncontested pursuant to waiver by Respondent, wherein Respondent had an obligation to respond (Rule 15.1) and by not responding renders rebuttal moot, pre-empting any further litigation?

2. Should the Court grant certiorari in a case where statements and allegations go unrefuted, and Respondent by remaining silent, thereby admits to the same?

3. Should the Court grant certiorari when the waiver filed by Respondent pursuant to Rule 15.1 and 15.5 effectively creates an Estoppel In Pais/Estoppel In Laches, thereby preventing Respondent from any further action?

4. Whether the waiver filed by Respondent and the default created thereby, creates the condition of Collateral Estoppel, thereby preventing respondent from action in future cases filed by petitioner involving similar issues?

5. Does an irreconcilable contradiction exist in the United States Judicial system, wherein the issues are not reviewed by the lower courts pursuant to Title 5, United States Codes, Sections 554, 556, 702, 703, and 706, and the Highest Court of the Land refuses to grant certiorari, review the issues, and close the question in keeping with Amendments I and V of the Constitution, or in the alternative does the Waiver create a default condition in favor of petitioner, thereby resolving this contradiction?

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PRELIMINARY STATEMENT

Petitioner Bruce Buchbinder comes before this Court stating there exists an intervening circumstance of a controlling effect, not previously presented to this Court. The intervening circumstance is set forth within the body of the Brief herein.

STATEMENT OF THE CASE

On November 16, 1995, Petitioner Bruce Buchbinder filed a Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, seeking the issuance of a supervisory opinion in review of the actions of the United States Court of Appeals for the Ninth Circuit and the United States Tax Court. The relief sought resulted from the subsequent dismissal of Buchbinder's case by the Ninth Circuit which effectively and subsequently denied Petitioner's constitutionally protected right to procedural and substantive due process, and right to meaningful access to the courts. In addition, Petitioner Buchbinder raised the issue of the waiver filed by respondent in petitioner's previous Supreme Court cases, alleging that the Tax Court ignored the default and the estoppels created thereby, and thereby trampled on petitioner's Constitutional right to Redress of Grievances.

Petitioner presented a case against Respondent, complaining that the Ninth Circuit Court imposed monetary sanctions for an allegation of misconduct that never actually took place coupled with a second subsequent sanction of dismissal. Petitioner stated in the Petition for Writ of Certiorari filed November 16, 1995, pages 8 and 9, that the issues in the first case (alleged misconduct) were confused by the Commissioner and that the Ninth Circuit adopted the Commissioner's confusion,

sanctioning Buchbinder for a frivolous argument that Buchbinder never actually made. The first case (alleged misconduct) led to the present case (dismissal for nonpayment of sanctions), which is herewith on appeal. The instant case was dismissed on the contention that Buchbinder had failed to pay the sanction imposed by the Ninth Circuit in Buchbinder's first appeal. The Petitioner further contended that he was extremely punished by the Ninth Circuit Court of Appeals for something that he never actually did and that the punishment was so extreme that he had been substantially denied access to the meaningful judicial review of his case.

Petitioner therefore alleged he was left without remedy in the denial of his due process rights pursuant to Title 5 U.S.C. §§ 554, 702, 703, and 706, as guaranteed by Amendment V of the United States Constitution; in the denial of his right to petition for Redress of Grievances as guaranteed by Amendment I, and in the denial of his right to meaningful access to the courts as guaranteed by Amendment IX.

Further, petitioner alleged on pages 17 and 20 of the Petition, that the default created by waiver filed by respondent in petitioner's previous Supreme Court cases, precipitated the condition of Collateral Estoppel and touched the instant case.

On November 22, 1995, during pendency of petitioner's Petition for a Writ of Certiorari to this Court, the Solicitor General, Drew S. Days, III, who makes appearance and is counsel for Respondent, admitted to practice before this Court, appeared by brief and filed an express written waiver of right to file in opposition to Petitioner's asserted facts and conclusions. Respondent, in filing waiver pursuant to Supreme Court Rule 15.5, admitted and confirmed the validity and accuracy of Petitioner's statements and allegations. A copy of the waiver

appears in Appendix A.

RESPONSE TO WAIVER

In his Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, Petitioner raised the question of whether the arbitrary dismissal of a litigant's cause of action before the courts, especially an action brought by a Pro Se litigant is the harshest sanction that can be imposed by the courts, and whether such a sanction can rise to the level of denial of proper Due Process, denial of right to petition for a Redress of Grievances and denial of Right to meaningful access to the Courts. These questions remain unanswered in respect to the Petitioner. Petitioner also raised the question of whether the Waiver filed by respondent in petitioner's previous Supreme Court cases, and the default concessions to the validity of petitioner's claims created thereby, creates a condition of Collateral Estoppel in the instant case. Subsequently, after failing to respond to these allegations of the Petitioner that were before the Court, respondent has again defaulted pursuant waiver and is estopped from any further action in this cause.

Petitioner alleged that he had been deprived of his Due Process rights, deprived of his Right to Redress of Grievances, and deprived of his Right to meaningful access to the Courts; petitioner further alleged that the default created by respondent's waiver in petitioner's previous Supreme Court cases, and respondent's failure to object in a timely fashion, having established default, petitioner alleging that since default had been established by waiver in petitioner's previous cases, therefore such waiver in those cases precipitated the condition of Collateral Estoppel in the instant case. Again, after failing to

respond to the above allegations, respondent has defaulted pursuant waiver and is estopped from any further action in this cause.

The Government expressly waived its right to respond in the instant case pursuant to Supreme Court Rule 15.5. Such a waiver, in the face of Petitioner's asserted facts and conclusions, serves to leave the Petitioner's allegations uncontested before the Court and leaves the Respondent unable to later act in contravention of those allegations.

The Government offered no defense against the accusations made by Petitioner, and did not point out any perceived misstatements of law or fact *having an obligation* to do so pursuant to Supreme Court Rule 15.1. The Government specifically chose to waive that right pursuant to 15.5. Such a response is a plea of no contest entered willingly and without coercion. Respondent defaulted in the instant case by tender of express waiver of its obligation to counter petitioner's version of the law and facts, thereby accepting petitioner's version of the law and facts to be true. Respondent did not correct the record as to what issues were proper to bring before the Court, and specifically did not question the basis for the petition, nor question the grounds upon which petitioner raised his petition, nor did the respondent bring to the Court's attention that petitioner raised no valid Due Process issue, nor did Respondent bring to the Court's attention that Petitioner was making assertions which had no valid basis in the record. In short, respondent made no attempt to protect the basis he had established in the lower courts. He made no attempt to show the Court that the issues being raised were based in frivolous and groundless argument, as he had contended in the lower courts, nor did he seek damages for such pursuant to Supreme Court Rule 42.2. Instead, respondent conceded by waiver that

petitioner had indeed not received the Scope of Review mandated by Title 5, Section 706; respondent thereby conceding that petitioner had not received due process of law in the instant case. Further, respondent has again acknowledged his default by waiver. Instead of correcting the record, respondent again waived his right to file a Brief in Opposition, rendering rebuttal moot on these issues, and defaulting again thereby. Petitioner's statements and assertions, unrebutted in the face of Rule 15.1, stand as truth, thereby rendering respondent's rebuttal before the Court moot in the instant case. Under the Common Law Rule of Reasonable Argument, Petitioner therefore claims a default-judgment against Respondent in the instant case and invokes an Estoppel in Pais/Estoppel in Laches. U.S. v. *Schneiderman,* 102 Fed. Supp. 87 (1951) and *States S.S. Company v. Permanente S.S. Corp.*, 231 F.2d. 82 (1956).

CONCLUSION

This Petitioner has a constitutional right under Amendment I and V of the Constitution to Due Process and Redress of Grievance, and where rights secured by the Constitution are involved, there can be no ***rule making*** or ***legislation*** which would abrogate them. *Miranda v. Arizona*, 384 U.S. 436. Therefore, this petitioner has a right to have his issues fully reviewed and adjudicated by the Highest Court in the Land, as this has been an impossibility in the lower courts. Nothing should prevent this full review and adjudication, except in lieu of re-examination by the Court respondent's waiver acts as a default and creates an Estoppel to any further action, otherwise there is no remedy for petitioner's properly pled issues, and this would be repugnant to the Constitution, leaving petitioner at the

mercy of the lower courts, and would ultimately lead to judicial usurpation of powers by the lower courts.

In *Cohens v. Virginia*, 6 Wheat. (1821) 264 at 416; the Court noted that " ... the necessity of uniformity, as well as correctness in expounding the constitution and laws of the United States, would itself suggest the propriety of vesting in some single tribunal the power of DECIDING, in the last resort all cases in which they are involved" [Emphasis added]. The Court further noted that in construing the words of the Constitution, defining the judicial power, that in the true sense the Court was not bound to construe the words more restrictively than they naturally import, and that the words of the Constitution give to the Supreme Court appellate jurisdiction in all cases arising under the Constitution, Laws, and Treaties of the United States.

In their opinion at 403- 404 the Court supposed "... a state to institute proceedings against an individual, which depended on the validity of an act emitting bills of credit; suppose a state to prosecute one of its citizens for refusing paper money, who should plead the constitution in bar of such prosecution. If his plea should be overruled and judgment rendered against him, his case would resemble this; and, unless the jurisdiction of this court might be exercised over it, the constitution would be violated, and the injured party be unable to bring his case before that tribunal to which the people of the United States have assigned all such cases.

"It is most true that this court will not take jurisdiction if it should not; but it is equally true, that it must take jurisdiction if it should. THE JUDICIARY CANNOT, AS THE LEGISLATURE MAY, AVOID A MEASURE BECAUSE IT APPROACHES THE CONFINES OF THE CONSTITUTION.

WE CANNOT PASS IT BY BECAUSE IT IS DOUBTFUL. WITH WHATEVER DOUBTS, WITH WHATEVER DIFFICULTIES, A CASE MAY BE ATTENDED, WE MUST DECIDE IT IF IT BE BROUGHT BEFORE US. We have no more right to decline the exercise of jurisdiction which is given, then to usurp that which is not given. The one or the other would be treason to the constitution. QUESTIONS MAY OCCUR WHICH WE WOULD GLADLY AVOID, BUT WE CANNOT AVOID THEM. All we can do, is to exercise our best judgment, and conscientiously to perform our duty. In doing this, on the present occasion, we find this tribunal invested with appellate jurisdiction in all cases arising under the constitution and laws of the United States. WE FIND NO EXCEPTION TO THIS GRANT, AND WE CANNOT INSERT ONE." [Emphasis added].

Further in *Cohens v. Virginia*, Wheat 6. at 409, the Court noted that, "A writ of error is defined to be a commission by which the judges of one court are authorized to examine a record upon which a judgement was given in another court, and, on such examination, TO AFFIRM OR REVERSE the same according to law." [Emphasis added].

The court further noted at 410-411 " Under the judiciary act, the effect of a writ of error is simply to bring the record into court, and submit the judgment of the inferior tribunal to *re-examination*. It does not in any manner act upon the parties; it acts only on the record. It removes the record into the supervising tribunal ... for the sole purpose of INQUIRING whether the judgment violates the constitution or laws of the United States, ... Nothing is demanded from the state. No claim against it of any description is asserted or prosecuted. The party is not to be restored to the possession of anything. Essentially, it is an appeal on a single point; and the defendant who appeals

from a judgment rendered against him, is never said to commence or prosecute a suit against the plaintiff who has obtained the judgment. The writ of error is given rather than an appeal, because it is the more usual mode of removing suits at common law; and because, perhaps, it is more technically proper where a single point of law, and not the whole case, is to be re-examined. But an appeal might be given, and might be so regulated as to affect every purpose of a writ of error. The mode of removal is form, and not substance. WHETHER IT BE BY WRIT OF ERROR OR APPEAL, no claim is asserted, no demand is made by the original defendant; he only ASSERTS the CONSTITUTIONAL RIGHT to have his defense EXAMINED BY THAT TRIBUNAL whose province it is to construe the constitution and laws of the Union". [Emphasis added].

"The only part of the proceeding which is in any manner personal, is the citation. And what is the citation? It is simply notice to the opposite party that the record is transferred into another court, where he may appear, or decline to appear, as his judgment or inclination may determine. As the party who has obtained a judgment is out of court, and may, therefore, not know that his cause is removed, common justice requires that notice of the fact should be given him. But this notice is not a suit, nor has it the effect of process."

At 411 the court further noted that, "If the party does not choose to appear, he cannot be brought into court, nor is his failure to appear considered as a default. Judgment cannot be given against him for his non-appearance, BUT THE JUDGEMENT IS TO BE RE-EXAMINED, AND REVERSED OR AFFIRMED, IN LIKE MANNER AS IF THE PARTY HAD APPEARED AND ARGUED HIS CAUSE." [Emphasis added].

The Court further noted at 383 - 384, "The constitution gave to every person ... a right to submit his case to the court of the nation. However unimportant his claim might be, however little the community might be interested in its decision, THE FRAMERS OF OUR CONSTITUTION THOUGHT IT NECESSARY, FOR THE PURPOSES OF JUSTICE, TO PROVIDE A TRIBUNAL AS SUPERIOR TO INFLUENCE AS POSSIBLE, IN WHICH THAT CLAIM MIGHT BE DECIDED ... that the judicial power of every well - constituted government must be co-extensive with the legislative, AND MUST BE CAPABLE OF DECIDING EVERY JUDICIAL QUESTION WHICH GROWS OUT OF THE CONSTITUTION AND LAWS." [Emphasis added].

As the judges in *Cohens v. Virginia* commented, "We think a case arising under the constitution or laws of the United States, is cognizable in the courts of the Union, whoever may be the parties to that case." (at 383).

Now therefore, since Respondent has defaulted in the instant case pursuant waiver, accepting petitioner's version of the law and facts to be true, conceding not only that petitioner did not receive Due Process of Law, but further conceding that default existing in previous Supreme Court cases litigated by petitioner precipitates the condition of Collateral Estoppel, there are therefore no grounds for further action in the instant case. The allegations are now decided in favor of the petitioner, as respondent did not defend his position pursuant waiver, and in light of the condition of Collateral Estoppel. Therefore, Respondent is enjoined from any further action on these issues, based on his default, and Respondent's attempts to further this action are blocked by Estoppel In Pais/Estoppel In Laches/Collateral Estoppel.

However, Respondent's default and the estoppels created thereby do not resolve the issue of abuses to litigants in the lower courts such as those manifesting themselves in the instant case. Therefore, the Court should consider granting certiorari in this case.

Petitioner claims damages from the Government in the amount of $750,000 on the grounds that Respondent has defaulted in previous Supreme Court cases litigated by petitioner, as well as the instant case; respondent resting in the position of Nolo Contendere/Non Prosequitur, after having caused petitioner undue disruption in Life, Liberty, and the Pursuit of Happiness; time and effort spent in research, in preparing briefs and pleadings and expense of court filing fees; these cases all being interrelated by similar issue, and having been litigated over a period of a decade (Tax Court Docket Nos. 41563-85, 8927-92, 3187-93, 8262-94 respectively; Ninth Circuit Court of Appeals Docket Nos. 92-70114, 94-70188, 95-70259, 95-70553 respectively; Supreme Court Docket Nos. 93-798, 94-620, 95-483, 95-778 respectively).

Respectfully submitted,

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Petitioner in Pro Se
1178 Via Ferrari Drive
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(408) 279-4054

DATED: December 5, 1995

APPENDIX A

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994

BUCHBINDER, BRUCE Petitioner	)	
vs .	)	No. 95-0778
COMMISSIONER OF INTERNAL REVENUE	)	

WAIVER

The Government hereby waives its right to file a response to the petition in this case, unless requested to do so by the court.

DREW S. DAYS, III
SOLICITOR GENERAL

November 22, 1995

cc: BRUCE BUCHBINDER
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